

1 quarter's folder along with the program guide if we  
2 had that.

3 Q Now, in addition to the two documents that  
4 you mentioned, the program guide and the NPR  
5 materials, were there any other materials that were  
6 placed in the quarterly folders?

7 A At that time other documents we placed in?  
8 I don't recall us placing other documents in. It may  
9 have -- I believe there were other documents that we  
10 had found in there that covered perhaps various shows,  
11 various periods of time, but I don't recall  
12 specifically which ones they were.

13 As best we could, we tried to put them in  
14 the appropriate quarterly folder when we had them.

15 Q So there were other documents that were  
16 loose? I mean, how were these other documents  
17 located?

18 A We went to -- when I -- in February, this  
19 was subsequent to the Letter of Intent from the FCC  
20 that had been sent to me by -- that had been sent to  
21 our attorneys and they subsequently had sent a copy to  
22 me --

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1 JUDGE SIPPEL: February, 2001?

2 THE WITNESS: February, 2001. I believe  
3 the letter was dated February 5th. I may be off by a  
4 day or two there, but -- subsequent -- I've lost my  
5 train of thought -- I inspected the Public File at  
6 that time and looked in it and wondered what seemed to  
7 be issues and programs section of that, we pulled out  
8 whatever pieces of paper, some program guides that I  
9 had found there.

10 Again, like I say, they were not set up in  
11 an ongoing, every quarter, different folder. I pulled  
12 out whatever was in there and I reported that back to  
13 our attorneys in a phone conversation.

14 BY MR. SHOOK:

15 Q My focus really is more on what documents  
16 you found and then what you did with them.

17 A Yes, okay. So, what I did with them, if  
18 we had them, we tried to recreate as best from  
19 examining the documents, whatever we found in there,  
20 non program guides; things that weren't program  
21 guides. We then put it in whatever folder that piece  
22 of paper, whatever time period that piece of paper

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1 might refer to.

2 Q Do you recall there being any documents  
3 created to cover non-NPR programming when this process  
4 occurred in late February or early March of 2001?

5 A I don't recall any other documents or any  
6 other thing we prepared and placed in those folders at  
7 that time.

8 Q I'm afraid we're going to have to start  
9 looking at documents again. Could you turn to page  
10 five of EB Exhibit 44? Are you ready, Mr. Helgeson?

11 A Yes, I've seen the document.

12 Q Okay. As best as we can tell, this is the  
13 fourth page of the winter 1992 program guide, or radio  
14 program schedule and the page that you're looking at  
15 is entitled Program Sources. There are a number of  
16 places on the document that appear to be struck out.  
17 In other words, there's an x through it.

18 A I see that.

19 Q Do you have any knowledge as to who placed  
20 the x there?

21 A Oh, this is quite clear, yes. One of the  
22 things I would do in the course of a quarter -- why I

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1 had my copy of the program, that's the other reason I  
2 -- I'd forgotten that I forgot to mention this  
3 earlier. Why I kept a copy, one particular copy on my  
4 desk was if there was some change in information about  
5 a particular program, such as the address of the  
6 producer changed or the price of tapes changed,  
7 something along those lines, I would then mark it in  
8 my current copy of the program guide.

9 Then when I was preparing the next issue  
10 of the program guide, I would know to remove or change  
11 that information. When we make a new program guide,  
12 this particular page, or something very similar to it,  
13 is in every program guide. The X's through things,  
14 that probably means not to put that information in the  
15 next program guide.

16 Q So, can I make the inference that a cross  
17 out represents a program that was being discontinued.

18 A That would probably be a good inference.  
19 Most likely that meant we weren't going to be carrying  
20 that particular information that was X'ed out in the  
21 next copy of the guide. Chances are if you look at  
22 whatever this one was, the next copy to see if that

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1 information -- that probably would be the case.

2 Q So, if we go to Exhibit 44, page 66 --

3 JUDGE SIPPEL: What was the page number  
4 again?

5 MR. SHOOK: EB Exhibit 44 page 66.

6 JUDGE SIPPEL: Sixty-six, thank you.

7 BY MR. SHOOK:

8 Q In comparing the two pages that we've just  
9 talked about, EB Exhibit 44 page 5 and EB Exhibit 44  
10 page 66, for example, the --

11 A I'm sorry. We put the original -- the  
12 first one we put back in the binder. I don't have  
13 that.

14 JUDGE SIPPEL: I'm sorry. What page was  
15 the other one, five?

16 MR. SHOOK: Page five.

17 JUDGE SIPPEL: Okay.

18 BY MR. SHOOK:

19 Q If you look at the far right hand column,  
20 two particular entries on page five have X's through  
21 them; one being Radio Stage and the other being  
22 Selected Shorts. Do you see that?

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1           A       I see the X there and I see the X through  
2 Selected Shorts. Yes, I see that.

3           Q       All right and then if you look at EB  
4 Exhibit 44, page 66 --

5           A       Yes.

6           Q       You will note that neither Radio Stage nor  
7 Selected Shorts appears.

8           A       Let's see, on the second one it starts --  
9 I'm going to just kind of speak out loud here. It  
10 helps me a bit. Record Shelf and then it lists Social  
11 Thought and then it lists Sound Ins --

12          Q       So, it looks like Selected Shorts isn't  
13 there and Radio Stage?

14          A       It does look like Radio Stage isn't in the  
15 alphabetic list.

16                   JUDGE SIPPEL: Is or is not?

17                   THE WITNESS: Is not.

18                   BY MR. SHOOK:

19          Q       So, that would be consistent with the  
20 thought that both Radio Stage and Selected Shorts were  
21 taken out of the program material that KALW ran?

22          A       For the following --

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1 Q For the following quarter.

2 A For the following -- it was a notation to  
3 myself that I would need -- I could take that out for  
4 the following issue of the guide.

5 Q Now, likewise, if we looked at EB Exhibit  
6 page 66 and then compared that with EB Exhibit --  
7 excuse me, EB Exhibit 44, page 66 and then compared it  
8 with EB Exhibit 4, page 134, -- excuse me, I jumped  
9 ahead of myself. I missed one, page 78. So,  
10 comparing 66 and 78 --

11 MR. DUNCAN: Mr. Shook, I think he may be  
12 -- the witness may be getting a little confused about  
13 which one is what date because there aren't dates on  
14 the one page he's looking at. To any extent you can  
15 give him dates, it would probably help.

16 BY MR. SHOOK:

17 Q Okay. EB Exhibit 66 appears to be the  
18 fifth page of the spring 1992 radio program schedule  
19 and then page 78 appears to be the second page of the  
20 summer 1992 radio program schedule; the following  
21 three months.

22 Now, if you look at EB Exhibit 44, page

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1 66, there is an X through the program called New  
2 Letters on the Air. It's down in the third column at  
3 the bottom.

4 A I see that.

5 Q Then if you go to EB Exhibit 66, page 78,  
6 you don't see New Letters on the Air. So would it be  
7 a fair inference that New Letters on the Air was  
8 removed from KALW's programming about that time?

9 A It would have been removed on the  
10 subsequent quarter from the program guide -- that  
11 covers this program guide.

12 Q So as we're looking through the page of  
13 the program guide that reads Program Sources, and to  
14 the extent that there are X's that appear -- first of  
15 all, those are X's that you would have placed through  
16 the name of the particular program source?

17 A If this was in the Bill's copy, I would  
18 expect that I put the X through. These generally tend  
19 -- these tend to be, as far as I can tell, my  
20 handwriting notes on them.

21 Q To the extent that you put an X through a  
22 particular program source that was to signify that

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1 that program was no longer going to be aired on KALW?

2 A It was there to indicate to me that when  
3 I created this very page for the subsequent guide,  
4 that I would take that information out of that page.  
5 Which is why, for instance, like you said, New Letters  
6 on the Air is on number 66, but on 78 when we created  
7 this document from printing for the program guide for  
8 that summer '92, it wasn't there.

9 Q I'm going to jump ahead a little bit and  
10 read to you a portion of the Manager's Notes section.  
11 It appears, EB Exhibit 44, page 247, and this was a  
12 Manager's Notes that apparently was authored by Rose  
13 Levinson.

14 JUDGE SIPPEL: Did you get the date?

15 THE WITNESS: I'm sorry. What was the  
16 date again? The date for which program guide is it?

17 BY MR. SHOOK:

18 Q It's for the October, November, December  
19 1995 program guide.

20 A Okay.

21 JUDGE SIPPEL: What do you want him to do?  
22 Do you want him to read --

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BY MR. SHOOK:

Q No, I was going to read him a portion of the Manager's Notes that appear on page 247 of the EB Exhibit.

What I was going to read to you was, "you will notice some program changes in the current schedule. These alterations are made after careful consideration, motivated by staff's commitment to keeping KALW innovative and responsive."

JUDGE SIPPEL: Do you see where that is? It's the fourth paragraph down on the Manager's Notes.

THE WITNESS: Yes. It starts on the bottom of the left hand column?

JUDGE SIPPEL: Correct.

THE WITNESS: You will notice some program changes in the current schedule. These -- what's that word? I'm just --

JUDGE SIPPEL: Alterations.

THE WITNESS: Alterations are made after careful consideration motivated by staff's commitment to keeping KALW innovative and responsive.

JUDGE SIPPEL: Now, do you have a question

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1 to that or do you want us to keep reading?

2 THE WITNESS: At this point I don't know  
3 if I need to. Can I read on a little bit more just to  
4 see the context of that?

5 BY MR. SHOOK:

6 Q Certainly, but you can just read it to  
7 yourself.

8 A Okay.

9 MR. DUNCAN: Your Honor, do you mind if I  
10 remove my jacket?

11 JUDGE SIPPEL: No, go ahead.

12 MR. DUNCAN: It's getting hot. I don't  
13 know if it's from hopping up and down or the room is  
14 getting warm or Mr. Shook may be is --

15 JUDGE SIPPEL: Is it hot for anybody,  
16 including the witness?

17 MR. SHOOK: It's all the hot air I'm  
18 blowing around.

19 THE WITNESS: Okay.

20 BY MR. SHOOK:

21 Q All right. A little background to the  
22 question that I'm about to ask. Now, you've served

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1 under different general managers. You've mentioned  
2 Mr. Del Solar. There's Mr. Jacob. There's Ms.  
3 Levinson. There's Mr. Ramirez and yourself as stand-  
4 in, Mr. Johnson, yourself again as stand-in and now  
5 Ms. Sawaya.

6 Has it been your experience that virtually  
7 every year that you've been there, general managers  
8 drop and add programs and change the times of some  
9 programs that are kept, no matter who the general  
10 manager is?

11 A I'm sorry, it's the question. Are  
12 programs are kept no matter who the general manager is  
13 or --

14 Q Maintained, kept, however you want to say  
15 it, retained?

16 A I would say that looking over the KALW  
17 schedule, there are programs that sometimes only last  
18 one quarter. Sometimes they go on for years and  
19 years. Sometimes -- it depends on the program.

20 Q But basically programs come and go. Is  
21 that not so? Maybe I should put it this way, program  
22 schedules are not static. They change over time,

1 don't they?

2 A Periodically they change because -- for  
3 whatever reason. The reason could be that a producer  
4 -- a program goes out of production and so we have to  
5 come up with another program.

6 Or it's decided that somebody should -- if  
7 some show was so good that instead of being on for two  
8 hours, it should be on for three hours. I think  
9 that's reflected in her comments on this page.

10 So, in that sense, the program guide, the  
11 program grid of KALW and the schedule of programs --  
12 the whole seven days a week, 24 hours a day, changes  
13 gradually, I would say on a quarterly basis.

14 Q So, there would be some quarters where  
15 there were no changes made at all?

16 A As far as the program schedule goes there,  
17 I'd have to review every quarter, but I believe for  
18 most -- there could have been quarters where nothing  
19 changed at all.

20 Q But it certainly wasn't unusual for  
21 changes to take place in programming in terms of a  
22 program either being added or deleted?

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1           A       It wasn't unusual on a quarterly basis  
2       that a program -- the program schedule would change  
3       due to us adding a program, and of course if you add  
4       something, I guess you have to take something out.

5           Q       Well, unless you're a master physicist and  
6       you can somehow manager to squeeze more hours in a  
7       day.

8           A       We don't have anyone like that at KALW.

9           Q       You're working on it, though, right?

10          A       I don't know if operations managers do  
11       that though.

12          Q       Now, I want to direct your attention to EB  
13       Exhibit 44, pages 46 to 61. For the purpose of my  
14       question --

15          A       I'm sorry. I'm still looking for it.

16          Q       Okay.

17          A       All right.

18          Q       The documents appear on the Spring 1992  
19       portion, and page 46, the title of the document reads  
20       Alan Farley's Interviews, Spring 1992, beginning at  
21       page one and then they go on for 15 pages thereafter.

22                   So, basically, if you have an

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1 understanding of what the format is that appears on  
2 page one, the same format appears on the following 14  
3 pages.

4 A Okay.

5 Q Do you know who created the pages that  
6 constitute the document entitled Alan Farley's  
7 Interviews, Spring 1992?

8 A Alan Farley is a host and producer of  
9 radio programs at KALW, besides being a staff  
10 announcer, and these records would have been kept by  
11 Alan as far as when guests were on and interviewed.

12 Q Well, my question is --

13 A As far as the document itself, this was  
14 created by Alan.

15 Q Okay. Do you know whether the document  
16 was created by Alan?

17 JUDGE SIPPEL: You're asking him if he has  
18 firsthand knowledge of that?

19 BY MR. SHOOK:

20 Q Whether he was given the document by Alan,  
21 whether he was told by Alan, something that would help  
22 us understand how this document came to be created.

1 If you know?

2 A I don't know how this document came to be  
3 created.

4 Q Do you have any knowledge as to when the  
5 document came to be created?

6 A I don't see any indication on here when it  
7 was created and I don't have any independent knowledge  
8 of it -- of that date.

9 Q Do you know who placed the pages  
10 constituting the document entitled Alan Farley's  
11 Interviews, Spring 1992, in the Public Inspection  
12 File?

13 A I don't recall if I saw this document when  
14 I looked in the Public Inspection File in February of  
15 2001, after the February Letter of Intent, of inquiry  
16 came from the FCC, or if it was placed in there at  
17 that time. I don't have any recollection.

18 Q Do you see Alan Farley on a daily basis at  
19 the station?

20 A Alan tends to work Monday through Friday  
21 and so I would -- I'd commonly see him to this day, or  
22 not today, but he still is working there.

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1 Q No, unfortunately you're here. But  
2 ordinarily you would have occasion to see Mr. Farley  
3 at the radio station on a Monday through Friday basis?

4 A That's generally the schedule, yes.

5 Q That schedule has extended approximately  
6 over what period of time?

7 A Alan was working there five days a week  
8 when I first started there and he's still five days a  
9 week, so quite a few years.

10 Q Have you ever asked Alan whether he  
11 created the document entitled Alan Farley's  
12 Interviews, spring 1992?

13 A I've never asked him about this document,  
14 no.

15 Q He never told you?

16 A I don't recall him ever telling me.

17 Q Now, in terms of the information that  
18 appears on page 61, which was the last page, I believe  
19 we looked at --

20 A Okay.

21 Q There appears to be some handwriting in  
22 addition to the printed material that's on the page.

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1           A     On the far -- are you referring on the far  
2 right there?

3           Q     Well, the word length is underlined and  
4 then on the far right, there's a column that appears  
5 to be M-I-N and then it's underlined, and then after  
6 the printed 1519, there's an equal sign, and it has 25  
7 and one-third hours.

8           A     I see that. Is that 25 and one-third  
9 hours or 35 and one-third hours?

10          Q     Well, it looks like a two to me, so I --

11          A     Okay.

12          Q     The number itself isn't particularly  
13 important to me. My question is do you know who put -  
14 - who placed the handwriting on this page?

15          A     I can't tell the handwriting -- whose  
16 handwriting it is.

17          Q     All right. I next want to direct your  
18 attention to more documents in EB Exhibit 44. The  
19 pages that I would like you to look at, or the first  
20 page of that group, is from the summer 1993's portion  
21 and it is page 114.

22          A     Summer '93?

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1 Q Yes.

2 A Okay.

3 Q First of all, do you recognize the  
4 document that appears as EB Exhibit 44, page 114?

5 A Vaguely I recall seeing it, but I couldn't  
6 pit it down at a specific time and --

7 Q That wasn't my question.

8 A Okay. Yes. I vaguely recall seeing this,  
9 seeing that document formatted like this.

10 Q Okay and that's not my question either.  
11 My question is do you recognize what it is that you're  
12 looking at?

13 A Oh, yes, I do.

14 Q What is it?

15 A This appears to be a list of regarding the  
16 AIDS Update program that we carry on KALW and on  
17 specific dates who was interviewed on that program on  
18 specific dates.

19 Q Was there a person at the station who is  
20 generally responsible for overseeing the production of  
21 the AIDS Update program?

22 A That would have been Alan Farley.

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1           Q       So, when I look at page 114 and there is  
2 a column that appears in the far right, and I can't  
3 quite make out what the heading of that column is but  
4 there appear to be a series of initials underneath it.  
5 So, where I see A.F., that would be Alan Farley?

6           A       I would -- I'd have to use the word, I  
7 would assume that A.F. stands for Alan Farley.

8           Q       Do you have any reason to believe it is  
9 anybody else?

10          A       No.

11          Q       Now, I think you anticipated some of my  
12 questions before, but let me ask them so that in the  
13 event that you want to modify your answer in any way,  
14 you can. Do you know who created this document?

15          A       I don't know who created this document.

16          Q       Do you know approximately when it was  
17 created?

18          A       I don't recall when it was created. There  
19 doesn't seem to be any notation on this that would  
20 indicate when it was created.

21          Q       To the best of your knowledge, is this a  
22 document that is currently in the KALW Public

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1        *Inspection File?*

2            A        To the best of my knowledge, it would be  
3        in the KALW Inspection File, although, I'd want to  
4        review the KALW Inspection File.

5            Q        Well, just to give you an idea of how it  
6        is that you're looking at this document in this point  
7        in time and where it's arranged, we were given a  
8        compact disc by SFUSD's attorneys and one of the  
9        things that we did is we went through the disc to see  
10       what documents corresponded with what points in time,  
11       and according to the compact disc it was represented  
12       to us that this document was in the Summer 1993  
13       section of the Public File.

14                    It would seem to make sense given the  
15       dates that appear for the programming that are listed  
16       on the far left where it says --

17            A        Yes, by airdate. I see.

18            Q        Now, with that in mind, do you have any  
19        knowledge as to when this document was placed in the  
20        Public File?

21            A        I really don't recall when it was placed  
22        in the Public File.

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1 Q The next page I'd like to direct your  
2 attention to is page 128, and that appears in the Fall  
3 1993 portion. Do you recognize this document?

4 A Yes, I recognize it's the same format as  
5 the last one.

6 Q So, what is it?

7 A This is a -- appears to be for the AIDS  
8 Update program for the quarter of -- looks like the  
9 fall of 1993, a list of guests who were interviewed  
10 for the AIDS Update program.

11 Q Do you know who created this document?

12 A I don't know who created this document.  
13 I could only assume that it would have been by the  
14 producer of the program.

15 Q Who was?

16 A Alan Farley.

17 Q Do you know when the document was created?

18 A I don't recall when the document was  
19 created.

20 Q Would it be your understanding that this  
21 document is currently in the KALW Public Inspection  
22 File?

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1           A       It's my understanding that yes, it's in  
2 the KALW Public Inspection File.

3           Q       Do you know who placed the document in the  
4 Public Inspection File?

5           A       That I can't remember.

6           Q       Do you know when it was placed in the  
7 Public Inspection File?

8           A       That I don't recall.

9           MR. SHOOK:     Your Honor, with your  
10 indulgence, I'd like the witness excused for a minute  
11 for the purposes of discussing something with respect  
12 to documents similar to this.

13           JUDGE SIPPEL:   That's quite all right.  
14 I'm just thinking it's close to 4:00 and it might be  
15 a good time to take an afternoon break.

16           MR. SHOOK:     I'd like to resolve this  
17 matter first before we take a break.

18           JUDGE SIPPEL:   Well, then why don't we  
19 excuse him and he can go on a five minute longer break  
20 than we can.

21           MR. SHOOK:     That would be fine.

22           JUDGE SIPPEL:   All right. Let's go off

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1 the record.

2 (Whereupon the above-entitled matter went  
3 off the record at 3:48 p.m. and resumed at 3:48 p.m.)

4 MR. SHOOK: Your Honor, there are similar  
5 documents, and I'll give you the page numbers of the  
6 ones that I'm interested in, and that would be pages  
7 144, 158, 174, 187, 200, 213, 227, 240, 255, 265, 276,  
8 288, 299 and 311.

9 JUDGE SIPPEL: Okay, and you want to --

10 MR. SHOOK: I could ask the same series of  
11 questions with respect to each one of these, but I  
12 believe we could shortcut this process through some  
13 stipulations that the testimony that was given with  
14 respect to the first two such documents would be  
15 consistent for the remainder of the documents that  
16 I've noted.

17 MR. PRICE: Can I just ask Mr. Shook to  
18 make some proffer of what the relevance is for going  
19 through all this? I don't see any problem with it.  
20 I'm not sure why we're going through this exercise.

21 MR. SHOOK: Well, one of the reasons that  
22 we're going through this exercise is to try to pin

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1 down what documents were actually in the Public File  
2 when Mr. Ramirez made his certification, and if Mr.  
3 Ramirez's certification and his testimony about it is  
4 to be taken at face value, then none of these  
5 documents were in the Public File when he looked at  
6 it.

7 MR. PRICE: Is the stipulation that his  
8 testimony would be that he doesn't know when they were  
9 placed in there?

10 MR. SHOOK: His testimony to this point is  
11 that he doesn't know who created this document, he  
12 doesn't know when it was created, he doesn't know when  
13 it was placed in the Public File, he doesn't know who  
14 placed it in the Public File.

15 MR. PRICE: Now it's in there now.

16 MR. SHOOK: Well, it's there now.

17 MR. PRICE: That's fine.

18 MS. REPP: Can I just point out that my  
19 understanding of Mr. Ramirez's testimony is that he  
20 does not know what was in the Public Inspection File -  
21 - he did not state, for example, that the AIDS Update  
22 was not in there, so we --

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